

REMARKS

The Office Action of April 24, 2006, has been received and reviewed.

Claims 1, 2, 4-6, 8, 10-21, 75, 76, 79-85, 88, 101, 102, and 104-124 are pending and under consideration in the above-referenced application. Of these, claims 1, 2, 4-6, 8, 10-21, and 104-124 have been allowed, while claims 75, 76, 79-85, 88, 101, and 102 stand rejected.

The cancellation of claim 79 and the presented amendments are made without prejudice or disclaimer.

Reconsideration of the claim rejections is respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 75, 76, 79-85, 88, 101, and 102 stand rejected under 35 U.S.C. § 103(a) for reciting subject matter which is assertedly unpatentable over the subject matter taught in U.S. Patent 4,440,177 to Anderson et al. (hereinafter "Anderson"), in view of teachings from U.S. Patent 5,789,660 to Kofoed et al. (hereinafter "Kofoed") and U.S. Patent 6,475,158 to Orr et al. (hereinafter "Orr").

The standard for establishing and maintaining a rejection under 35 U.S.C. § 103(a) is set forth in M.P.E.P. § 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claim 79 has been canceled without prejudice or disclaimer, rendering the rejection thereof moot.

It is respectfully submitted that a *prima facie* case of obviousness has not been established against any of claims 75, 76, 80-85, 88, 101, and 102.

Anderson teaches a respiratory monitoring system that includes a nosepiece and separate flow, carbon dioxide, and oxygen sensors. See col. 5, line 24, to col. 4, line 24.

Kofoed teaches an integrated airway adapter, positionable along a breathing tube, that includes a housing with elements of both a differential flow sensor and an infrared-type sensor.

Orr discloses a calorimeter that includes a flow meter and a separate oxygen sensor, which may comprise a luminescence quenching-type sensor.

It is respectfully submitted that, without the benefit of hindsight that the rejected claims provide to the Office, one of ordinary skill in the art wouldn't have been motivated to combine the teachings of Anderson, Kofoed, and Orr in the manner that has been asserted. The teachings of Anderson are directed to a system for with separate sensors for analyzing exhaled respiratory gases. See, e.g., FIG. 2; the top of which illustrates gas sources, and the bottom of which shows a system for monitoring exhaled respiratory gases. See also, col. 5, line 24, to col. 6, line 24. The calorimetry system of Orr, likewise, includes separate flow and oxygen sensors that only receive exhaled gases. See, e.g., col. 3, lines 34-38. Thus, neither of these systems is configured to be positioned along a breathing circuit. In contrast, the teachings of Kofoed are directed to an "airway adapter" that includes features of multiple sensors in a single housing. Airway adapters are, by definition, configured for placement along a breathing circuit that communicates with airway. Thus, one of ordinary skill in the art would not have been motivated to incorporate teachings from Kofoed into the system of Anderson. As such, a *prima facie* case of obviousness has not been established.

In any event, none of Anderson, Kofoed, or Orr, taken separately or together, teaches or suggests a respiratory monitoring system that includes, among other things, an airway adapter with a transducer-orienting element and a transducer with an attachment feature that is configured to secure the transducer to the airway adapter in such a way that the transducer-orienting element defines an orientation of a plurality of features of the transducer, as is recited by each of independent claims 75, 82, 101, and 102, as amended and presented herein.

Therefore, under 35 U.S.C. § 103(a), the subject matter to which each of amended independent claims 75, 82, 101, and 102 is directed is allowable over the subject matter taught in Anderson, Kofoed, and Orr.

Claims 76 and 80-81 are each allowable, among other reasons, for depending from amended independent claim 75, which is allowable.

Each of claims 83-85 and 88 is allowable, among other reasons, for depending from amended independent claim 82, which is allowable.

Withdrawal of the 35 U.S.C. § 103(a) rejections of claims 75, 76, 79-85, 88, 101, and 102 is respectfully requested, as is the allowance of each of these claims.

Allowable Subject Matter

The allowance of claims 1, 2, 4-6, 8, 10-21, and 104-124 is gratefully acknowledged.

CONCLUSION

It is respectfully submitted that each of claims 1, 2, 4-6, 8, 10-21, 75, 76, 80-85, 88, 101, 102, and 104-124 is allowable. An early Notice of Allowability is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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